

**PUBLIC OFFERING STATEMENT**  
**FOR**  
**FALLING WATER SUBDIVISION**  
**A COMMON INTEREST RESIDENTIAL COMMUNITY**  
**UNION TAX DISTRICT,**  
**MONONGALIA COUNTY, WEST VIRGINIA**

**Prepared by Back Water Properties,  
LLC, Developer and Declarant**

**Prepared August, 2007 by Declarant**

## **FALLING WATER SUBDIVISION PUBLIC OFFERING STATEMENT**

**PREFACE:** This document is a general discussion of matters which are in many cases set forth with specificity in the Exhibits, attachments and documents referenced herein. The reader is advised to review all such Exhibits, attachments and documents carefully for a more specific and detailed explanation of the matters addressed in this Public Offering Statement. To the extent that any document including the Declaration of Protective and Restrictive Covenants for Falling Water Subdivision (“Declaration”) should in any manner conflict with or otherwise be inconsistent with the information in this Public Offering Statement, the terms and provisions of the Declaration shall govern in all matters and respects. All defined terms set forth in said Declaration have the defined meanings herein.

### **I Introduction.**

- 1.1 Falling Water (“Subdivision”) is a Planned Community form of Common Interest Community located in the Union Tax District of Monongalia County, West Virginia, and the project is being developed by Back Water Properties, LLC (“Declarant”). The Subdivision is a single family residential community which includes 79 Lots (“Units”) in one Phase (Phase 1) at the execution hereof. Phase 1 of the Subdivision comprised of Units of varying size all of which are limited to construction of single family detached residential dwellings. Phase 1 is divided into four sections, namely Sections A, B, C and D. Section B is known as “Falling Water Estates” or sometimes the “Estates”. Units in Section B are generally larger than the Units in the remaining Sections (A, C and D) of Phase 1 and are benefited by a private road which may be gated.
  
- 1.2 The Declarant has reserved the right to add land to the Subdivision as additional future Phases. Those future Phases may also be divided into multiple Sections. The covenants and restrictions controlling how a Unit may be used, or what improvements maybe made to a Unit will vary between Phases. As a result, future Phases and Sections may be dedicated containing Units which may be the site of detached dwellings, Patio Homes or Townhomes, or some combination of the same. Future Units may not be dedicated or added to the Subdivision at all, and if dedicated will vary in size depending on topography of the land and the type of dwellings which Declarant intends be constructed on the Units. If dedicated, Patio Homes and Townhomes may be attached rather than detached residential Units. In the case of Townhomes or Patio Homes, Declarant may elect for the Unit to be no larger than the physical boundary of the Townhome or Patio Home. Units in

future Phases may be larger or smaller than the Units in Phase 1. The covenants for Phase 1 vary between Sections with the covenants for the Estates Units varying significantly from Covenants for other Sections. With the exception of the restriction that Units must all be used for residential purposes, there is no assurance that future Units will be subject to covenants and restrictions consistent with the limitations on Units in Phase 1.

- 1.3 The Subdivision is being developed in segments known as Phases and the Declarant intends to dedicate additional Phases periodically as construction and sale of Units progress. It must be noted, however, that Declarant has no duty to dedicate any future Phase. Each Phase, when dedicated, will contain roadways, easements, utilities, Units and possibly common use areas known as Common Elements. The Declarant is responsible for providing utilities to the perimeter of each Unit and completing the roadways and Common Elements. The roadways and Common Elements will eventually be deeded either in fee or by easement to the Falling Water Property Owners Association, Inc., a non-profit West Virginia corporation ("Association"), created for the purpose of governing the Subdivision and maintaining the improvements therein and the standards set by the Declarant. All owners of all Units ("Unit Owners") are members of the Association by virtue of the fact that they own an interest in a Unit and are responsible for the management and operation of the Association and also a proportionate cost of the expenses of the Association.
- 1.4 During early stages of Development the Declarant will own the majority of Units which exist or may be created and thus Declarant will control the Association. Periodically, as an increasing number of Units are sold by Declarant to third parties, Declarant shall relinquish control of the Association to the Unit Owners. The Declarant's general schedule for completion of the Subdivision and the improvements to the Subdivision is attached as **Exhibit C**. This schedule is estimated based on a best case scenario and Declarant is not obligated to comply with the estimated schedule.
- 1.5 Declarant has recorded the Declaration which subjects all land in the dedicated Phases of the Subdivision to restrictive and protective covenants, rules, regulations, guidelines and standards for the purpose of maintaining the quality, character, market value and aesthetic value of the Subdivision and the Units. The Declaration, generally speaking, establishes: (1) the duties of the Declarant; (2) the rights reserved to the Declarant; (3) the minimum improvements which a Unit Purchaser may expect to be completed; (4) the powers, duties and operating structure of the Association; (5) the minimum architectural and landscaping guidelines and standards for all Units and houses; and (6) certain preliminary standards of, and limitations of the purposes for which, a Unit Owner may utilize a Unit, Common Element or a Limited Common Element. The Declaration also imposes certain limitations, restrictions and duties on you as a Unit purchaser. The Declaration also imposes certain duties on you as a Unit Owner and significantly limits what you may do with, and what you may allow to

happen on, your Unit.

- 1.6 Declarant formed the Association by filing Articles of Incorporation (“Articles”) with the West Virginia Secretary of State and Declarant passed the initial By-Laws of the Association (“By-Laws”) prior to the sale of the first Unit. The Articles are the operational structure of the Association which cause the Association to exist as an independent legal entity. The By-Laws are the daily operating rules and guidelines of the Association which may be modified and amended from time to time to address the operational needs of the Association. The Association’s may also pass Rules and Regulations which address issues not contemplated by the Declarant or which the Declarant elected to leave to the discretion of the Unit Owners at a future date. The Articles of Incorporation of the Association are attached as **Exhibit D** and the By-Laws are attached as **Exhibit E**.
- 1.7 The Declaration is the supreme governing instrument of the Subdivision. In the event of any conflict, the Declaration is the governing instrument which supersedes all provisions of this Public Offering Statement, the Articles of Incorporation, By-Laws, all promotional materials utilized in the sale of Units and all representations and warranties made by any realtor or real estate broker. The maps or plats of the Subdivision which are recorded in the Monongalia County Clerk’s Office are part of the Declaration but promotional maps and plats are not. The Declarant is not obligated to complete any improvement or amenity depicted on any map or plat, specifically including promotional maps, unless the Declaration or the map or plat specifically state to the contrary.
- 1.8 This Public Offering Statement sets forth the Declarant’s vision for the Subdivision and some of the pertinent considerations which will impact your decision to purchase a Unit or home in the Subdivision. This “Public Offering Statement” is a summary and generalization of matters set forth in the Declaration and other Exhibits and **you should read each of said documents carefully!**

1.9 **WARNINGS**

THROUGHOUT THIS PUBLIC OFFERING STATEMENT THERE ARE SPECIFIC WARNINGS CONCERNING THE DECLARANT, THE OWNER AND DECLARANT, AND THE SUBDIVISION OR INDIVIDUAL UNITS. BE SURE TO READ ALL WARNINGS CAREFULLY BEFORE SIGNING ANY PURCHASE CONTRACT OR AGREEMENT.

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**II GENERAL INFORMATION**

2.0 The Subdivision presently contains Seventy-Nine(79) Units, and Declarant has reserved the right to create up to Eight Hundred (800) Units.. At the execution hereof, the Subdivision is in the early stages of development and only one (1) Phase, containing Seventy-Nine (79) which are situate in four separate Sections. It must be noted that Declarant also has the right to restructure, remove and withdraw Units to the extent permitted by law, as a result not all of the Units in Phase I may remain in the Subdivision, the boundaries of the Units in Phase I may be modified, or Units in Phase I may be combined or subdivided. Although it is the Declarant's intention to fully develop all of its property, Declarant is under no duty to do so. As a result, Declarant may never build, dedicate and sell more than the Seventy-Nine (79) Units in Phase I. Even if additional future Phases are dedicated, no portion of Declarant's land is part of the Subdivision or subjected to the restrictions in the Declaration except the land specifically dedicated as future Phases by an amendment to the Declaration. Declarant has reserved the right to acquire additional real estate contiguous to or near the Subdivision and to incorporate some or all of such additional real estate into the Subdivision by dedication of additional future Phases. The Declarant has no obligation to dedicate such additional real estate if acquired. The protective and restrictive covenants in the Declaration apply only to those Units and Common Elements which have, from time to time, been dedicated as Phases in the Subdivision. The restrictions and covenants may vary with regard to future Units and Phases except to the extent that Declarant all future Phases and Units must be limited to residential use.

2.1 The name of the Declarant is:

Backwater Properties, LLC  
75 Lewellyn Road  
Morgantown, WV 26508  
(304) 216-4723

2.2 The initial address of the Association is:

Falling Water Property Owners Association, Inc.  
75 Lewellyn Road  
Morgantown, WV 26508  
(304) 216-4723

The address and phone number of the Association will change in the future when Declarant is no longer the primary Unit Owner or in control of the Association.

Answers to questions and information about this subdivision may be obtained by telephoning the Declarant and/or the Association at the numbers listed above.

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### **III RISKS OF BUYING LAND**

- 3.0 Declarant is selling Units which are either building lots or lots containing a home. The initial purchase price of each Unit reflects the cost of land to the Declarant, the cost of the improvements furnished by Declarant and expenses incurred by the Declarant in developing the Subdivision. Those expenses include the costs of engineering, legal, services, surveying, governmental approvals, construction, utilities, interest, and various other expenses which were required for the creation of the Subdivision. The cost of the Units is determined by factoring Declarant's costs and Declarant's desired return on its investment. As a result, certain amenities are not being provided (e.g. sidewalks, comprehensive curbing and underground storm sewers) and as a Unit purchaser, you are not paying for those amenities in the initial purchase price of your Unit.
- 3.1 Future value of any land is uncertain and dependent upon many factors. DO NOT expect all land to increase in value.
- 3.2 The value of your Unit may be affected by date of completion of, and completed quality of, the roads, utilities and all proposed improvements. At any given time the value of your land may also be affected by the number of Units for sale. If the Declarant adds additional Phases, the variety and quantity of available Units in the Subdivision alone may have a negative impact on the value of your Unit.
- 3.3 If you attempt to resell your Unit during development of the Subdivision and at a time when Declarant is actively marketing and selling Units, Declarant will be competing with you.
- 3.4 Development of this Subdivision will have an impact on the surrounding environment. Whether or not the impact is adverse or beneficial and the degree of impact will depend on the location, size, planning and extent of the Subdivision. Subdivisions which adversely affect the environment may cause governmental agencies to impose restrictions on the use of the land. Changes in plant and animal life, air and water quality and noise levels may affect your use and enjoyment of your Unit and your ability to sell it.
- 3.5 In the purchase of real estate, many technical requirements must be met to assure that you receive proper title. Since this purchase involves a significant expenditure of money, it is recommended that you seek professional advice before you obligate yourself to purchase a Unit. A number of the considerations appurtenant to the

purchase of land are addressed below.

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#### **IV METHOD OF LAND SALE, CONTRACTS, DEEDS, DUE DILIGENCE**

- 4.0 If you desire to purchase a Unit from the Declarant you must sign a written purchase contract and pay an earnest money deposit. No agreement is an enforceable contract unless it: (i) is written; (ii) is signed by all buyers and sellers; (iii) contains a specific description of the land to be conveyed and all terms of sale; and (iv) is accompanied by an earnest money deposit paid as consideration by the buyers. No negotiation or correspondence between you and the realtors or the Declarant shall constitute a contract unless there is one written agreement fulfilling the above requirements. No sales pitch, promise or assurance made to you by any party is enforceable against the Declarant unless reduced to writing in the contract. No promise that any service will be provided or any improvement made is enforceable if inconsistent with the Declaration. **To the extent that Declarant offered and entered into any Pre-Sale Agreements or Reservation Agreements, the same are not contracts for the sale of land. Rather, Pre-Sale Agreements or Reservation Agreements require the Declarant to give a specified potential purchaser the first option to enter into a contract to buy a Unit, when completed, within a specified time period, and on such terms and conditions as Declarant may elect. If you entered into a Pre-Sale Agreement or Reservation Agreement, you must convert the same to a contract by executing the Declarant's Uniform Purchase Contract in a timely manner, and without material modification to the terms or provisions thereof.**
- 4.1 Declarant intends to use cash-only purchases for the sale of all Units. A minimum deposit is required at the time of the signing of the sales contract in order for the sales contract to be binding. The remainder of the purchase price will be due at closing which will be no more than sixty (60) days from the signing of the contract. With this method of purchase, you will receive at closing a general warranty deed free and clear of all liens and encumbrances except those matters disclosed in the Public Offering Statement and subject to those restrictions, reservations, easements and covenants of record that apply to the property.
- 4.2 The Declarant does not offer any standard policy of financing of Unit purchases. Any contract offered to Declarant may include such provisions. Declarant reserves the right to decline such offers for any non-discriminatory reason permitted by law.
- 4.3 A restriction or an encumbrance on your Unit, or on the Subdivision, could adversely affect your title to the Unit. You should retain the services of a lawyer with real estate experience to provide you with a title certification prior to purchasing your Unit.

- 4.4 A person with legal title to property generally has the right to own, use and enjoy the property. A contract to buy a Unit may give you possession but it doesn't give you legal title. You won't have legal title until you receive a valid deed. A general warranty deed will be used to convey title to Units.
- 4.4 The recording of the sales contract gives actual notice to any other prospective purchaser of the subject Unit that there is legal claim against that Unit. It is not the local custom to record sales contracts. The general warranty deed which transfers title to the property will be delivered to you at closing and should be recorded in the Office of the Clerk of the Monongalia County Commission, Morgantown, West Virginia.
- 4.5 Before you purchase a Unit you should conduct certain due diligence to determine that the Unit is, in fact what you expect. Therefore, you should make your contract contingent upon your ability to complete appropriate due diligence investigations. As part of your due diligence investigations you should hire licensed and qualified professionals to, among other considerations: (i) examine and certify the title to the Unit; (ii) survey the Unit; (iii) determine whether the substrata and geological formations of the Unit permit your intended use of the Unit; and (vi) if the Unit is to be serviced by on-site septic system, to determine whether, and if appropriate what part of, the Unit meets County regulatory requirements for such a treatment system. You may also want to consider obtaining: (i) an appraisal to determine the market value of the Unit; (ii) a structural or engineering inspection of the Unit; (iii) testing to determine the presence of, and if present the volume of, radon gas present on and in the Unit; (iv) an opinion as to the presence of any wood destroying or wood infesting insects and whether there is any damage to the Unit as the result of same; and (v) such other examinations and investigations as are customary and prudent including investigations of those matters are addressed below.
- 4.6 Under West Virginia law, the recording of your deed will protect you from any claims by subsequent purchasers, from former owners, and from any claims of creditors of former owners which may arise subsequent to the date of recording. It is your responsibility to record your deed upon its delivery to you by us.

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UNLESS YOUR DEED IS RECORDED YOU MAY LOSE YOUR UNIT THROUGH THE CLAIMS OF SUBSEQUENT PURCHASERS OR OF SUBSEQUENT CREDITORS OF ANYONE HAVING AN INTEREST IN THE LAND.

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- 4.7 The Declarant believes that the land in the Subdivision has historically been utilized primarily for agricultural and residential purposes and Declarant has no knowledge of any underground storage tanks, burial sites or strip mining. Most land in Monongalia County has been mined to some degree and you may want to determine whether your Unit has been undermined. The Declarant has no knowledge of any mine subsidence in the Subdivision.
- 4.8 The land being developed is, at the execution hereof, encumbered by security instruments which are identified on **Exhibit F**. Each Unit will remain subject to the applicable liens until the closing of the sale for that Unit at which time Declarant shall pay a portion of its proceeds to the secured lender(s) in exchange for a release of the Deed of Trust to the extent that it constitutes a lien against the Unit. The Common Elements, including the easements and the rights-of-way serving the Subdivision, have not been released in full from these liens; however, each partial release will release the undivided ownership interest in the Common Element, easements and rights-of-way apportioned to the Unit. State law requires that lien holders provide a release within thirty (30) days after the lien holder's receipt of the sale proceeds.
- 4.9 You should obtain an attorney's opinion of title or a title insurance policy which will describe the rights of ownership that you are acquiring in the Unit. We recommend that you have an attorney or other appropriate professional interpret the opinion or policy for you. You should also have your attorney interpret the Declaration and other documents included in this Public Offering Statement.
- 4.10 The oil and gas rights to the Units in this Subdivision will not belong to the purchasers of those Units. The exercise of these rights by their respective owners could affect the use, enjoyment and value of your Unit. To the extent that Declarant may own any of such rights, Declarant shall not utilize the surface of the Subdivision or any Unit or Common Element for the purpose of extracting same.
- 4.11 Declarant is offering the Subdivision and Units for sale subject to those limitations and exceptions which: (a) existed when Declarant acquired the land; (b) Declarant imposed as part of the development process; (c) which Declarant has and may from time to time establish to maintain the character and quality of Units in the Subdivision; and (d) include the above referenced security instruments, and any subsequent financing by Declarant. West Virginia law provides that you take your Unit subject to such limitations and exceptions regardless of whether the same were disclosed to you by Declarant prior to your closing.
- 4.12 As noted above, you should retain the services of an attorney to examine the title to your Unit. Notwithstanding the foregoing, the liens and encumbrances which are known to affect the Subdivision are identified on **Exhibit F**.

